IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

RP.No. 909 of 2006()

(JUDGMENT DT. 24.8.2006 IN W.A.NO.801/06 & 964/06)

: REVIEW PETITIONER

K.SANTHOSH KUMAR,
DEPUTY CONTROLLER OF LEGAL METROLOGY
(UNDER SUSPENSION), "AATHIRA", AATHIRA NAGAR,
KALLEKULANGARA P.O., PALAKKAD DISTRICT.

BY ADV. SRI.K.V.KUMARAN

RESPONDENTS: APPELLANT/RESPONDENTS
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1. R.SASIDHARAN PILLAI,
CONTROLLER OF LEGAL METROLOGY,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY TO GOVT. OF KERALA,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, REP. BY GOVT. PLEADER
SHRI. MOHAN C. MENON.

BY ADV. SRI.KRB.KAIMAL (SR.)

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 22.8.2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN, JJ.

R.P.No.909/2006 in W.A.Nos.801 & 964 of 2006

Dated 22nd August, 2007.

O R D E R

Kurian Joseph, J.

This Review Petition is at the instance of the first respondent in the writ appeal, who is the writ petitioner. The learned Single Judge took the view that appointment to the post of Controller of Legal Metrology is to be done by promotion and for that purpose, the Departmental Promotion Committee is to prepare a select list.

2. In view of the specific statutory mandate under Rule 28A of the K.S. & S.S.R. read with Rule 28(b)(i), it was held by us in the judgment that the appointment to the post of Head of the Department shall be made on the basis of merit and ability, seniority being considered only when merit and ability are approximately equal, notwithstanding anything contained in the Special Rules. It is the contention of Sri.K.V.Kumaran, learned counsel appearing for the review petitioner that on an earlier occasion, when the question of appointment to the post of Controller arose, the same was made by promotion on the basis of seniority alone as per the Special Rules. Only in the case of

appointment of the petitioner, the Government took the stand that it shall be made on the assessment of merit and ability, ignoring the Special Rules. Thus it is submitted that the change in the stand amounts to hostile discrimination. We are afraid, the contention cannot be appreciated. As already held by us, the appointment to the post of Head of the Department is to be made by promotion on assessment of merit and ability and only in the absence of eligible candidates, direct recruitment can be resorted to. While making appointment by way of promotion, the merit and ability has to be assessed, seniority being considered only when merit and ability are approximately equal. It is seen from Annexure A3 document produced by the review petitioner himself along with the review petition that the Government has considered and assessed the merit and ability of the seniormost person, viz., the review petitioner and only on finding that he was not suitable for appointment, as disciplinary action was pending against him and further that his probation had not been declared, he was not found eligible. It was in such circumstances only, the eligibility of the next person in the seniority list, viz., the second respondent was considered. Thus it can be seen that it was not as if the Government did not assess the eligibility of seniormost

person. The seniormost person, viz., the review petitioner was considered and only on finding that he cannot be appointed in view of the pendency of the disciplinary action, the second person in the seniority list was considered. Thus, we do not find any merit in the Review Petition. It is dismissed.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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